APPENDIX

TABLE OF CONTENTS

Page

Order of the New York Court of Appeals dismissing a motion for leave to appeal to the Court of Appeals . . . . . 1(a)

Order of the Supreme Court of the State of New York Appellate Division, Fourth Department . . . . . 2(a)

Memorandum and opinion of the Supreme Court of the State of New York Appellate Division, Fourth Department . . . . . 3(a)

Order of the Supreme Court of the State of New York Appellate Division, Fourth Judicial Department denying motion for leave to file a petition for reargument or leave to appeal to the Court of Appeals . 5(a)

Decision regarding Calculation of Dr. Baker's Medical Degree from the State of New York Supreme Court (trial court) . . . . . 6(a)

Findings of Fact and Conclusions of Law of the State of New York Supreme Court (trial court) . . . . . 16(a)

Judgement of Divorce of the State of New York Supreme Court (trial court) . . 30(a)

APPENDIX

STATE OF NEW YORK
COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the seventeenth day of January 1995

PRESENT, HON. JUDITH S. KAYE
Chief Judge, presiding.

4-14 Mo. No. 1383

DONNA L. BAKER, RESPONDENT,
V
DUANE C. BAKER, APPELLANT.

(FILED 17 January 1995)

A motion for leave to appeal to the Court of Appeals in the above care heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constituition.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, FOURTH JUDICIAL DEPARTMENT

0915

PRESENT: PINE, J.P., BALIO, FALLON, WESLEY, DAVIS, JJ.

DONNA L. BAKER, RESPONDENT,
V
DUANE C. BAKER, APPELLANT.

(FILED JULY 15, 1994)

The above named Duane C. Baker having appealed to this Court from the judgement of the Supreme Court, entered in the Onondaga County Clerk's office on December 28, 1992, and said appeal having been submitted by Duane Baker, appellant, Vincent Finocchio, Jr., of counsel for respondent, and due deliberation having been had thereon,

It is hereby ORDERED, That the judgement so appealed from be and the same hereby is unanimously modified on the law by vacating the third decretal paragraph and so much of the sixth decretal paragraph as orders payment of

maintenance and as modified the judgment is affirmed without costs and the matter is remitted to Supreme Court for further proceedings in accordance with the Memorandum which is hereby made a part hereof.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, FOURTH JUDICIAL DEPARTMENT

0915 MEMORANDUM

PRESENT: PINE, J.P., BALIO, FALLON, WESLEY, DAVIS, JJ.

DONNA L.. BAKER, RESPONDENT,
V
DUANE C. BAKER, APPELLANT.

(FILED JULY 15, 1994)

Judgement unanimously modified on the law and as modified affirmed without costs and matter remitted to Supreme Court for further proceedings in accordance with the following Memorandum: Supreme Court erred in ordering defendant to pay open-ended maintenance consisting of the mortgage, taxes, insurance and "all basic utility expences to maintain the marital residence" until the emancipation of the children or the death of

plaintiff. Such open-ended payments are improper (see, 22 NYCRR 202.50 (b) Appendix B; Weinstein v. Weinstein, 125 AD2d 301, 303; Belcastro v. Belcastro, 104 AD2d 625; see also Chasnov v. Chasnov, 131 AD2d 624, 625). The court further erred in ordering defendant to pay as maintenance the full amount of housing expences for the marital residence when the court also ordered defendant to pay child support. Because child support includes an allowance for housing expences, the children's share of those expences must be deducted from the total amount of housing expences when maintenance is calculated (see, James v. James, 169 AD2d 441, 442; ScheinKman, Supp Practice Commentaries, McKinney's Cons Laws of NY, BooK 14, Domestic Relations Law C240:27, 1994 PocKet Part, at 259).

With respect to child support, the record does not clearly establish what amount was ordered. The court should have computed the amount in accordance with the Child Support Standards Act.

Thus, we vacate the third decretal paragraph

and so much of the sixth decretal paragraph as orders payment of maintenance and remit the matter to Supreme Court for proper computation of child support and maintenance. (Appeal from Judment of Supreme Court, Onondaga County, Hayes,J. - Equitable Distribution.)

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, FOURTH JUDICIAL DEPARTMENT

MOTION NO. 915/94

PRESENT: PINE, J.P., BALIO, FALLON, WESLEY, DAVIS, JJ.

DONNA L. BAKER, RESPONDENT,
V
DUANE C. BAKER, APPELLANT.

(FILED September 30, 1994)

Appellant having moved for reargument of or, in the alternative, leave to appeal to the Court of Appeals from the order of this Court entered July 15, 1994,

Now, upon reading and filing the statement of Duane C. Baker filed August 9, 1994, the notice of motion with proof of service thereof,

and due deliberation having had thereon,

It is hereby ORDERED, that the motion be, and the same hereby is, denied.

STATE OF NEW YORK SUPREME COURT
COUNTY OF ONONDAGA

DECISION

RJI NO. 33-89-3439
INDEX NO. M-1348-89

PRESENT, HON. LEO F. HAYES

DONNA L. BAKER, PLAINTIFF,
V
DUANE C. BAKER, M.D., DEFENDANT.

(Dated: December 11, 1992)

APPEARANCES: Vincent J. Finocchio, Jr., Esq.
Attorney for Plaintiff
333 East Onondaga Street
Syracuse, New York 13202

Richard Alderman, Esq.
Attorney for Defendant
555 Empire Building
Syracuse, New York 13202

At this juncture, the Court considers the valuation of the medical license of Dr. Duane C. Baker. In evaluating the worth of the medical license, the Court had the benefit of testimony by two experts. Dr. Jerry Miner, a professor of

economics at Syracuse University, with a Bachelors Degree, Masters Degree and PH.D. in Economics from the University of Michigan, testified on behalf of the plaintiff, Donna L. Baker. T. Kevin Fahey, an Attorney and Certified Public Accountant, testified on behalf of defendant Duane C. Baker.

As the experts themselves noted, they are not in disagreement on the basic methodology of the computation.

The parties were married on January 6, 1978. During their marriage the defendant, Duane Baker, having finished college, did graduate work for two years at Vanderbilt University, then attended medical school at the Upstate Medical Center in Syracuse. He did a first year of internship at Upstate starting in July of 1986 and began a residency in July of 1987. He completed his medical residency in anesthesiology in the summer of 1990. The parties' matrimonial action commenced on September 18, 1989.

While Dr. Baker is not yet board certified in Anesthesiology, it appears that he is board

eligible. Dr. Baker took the written exam for the board certification following completion of his residency and passed the written exam. He has failed the oral exam on his frist attempt.

The experts are in agreement that for purposes of valuing the medical license of Dr. Baker, one should compare his earnings over the course of his career as a physician as against those earnings he would have earned as a four-year college graduate. Both experts have utilized military physician pay as the basis for comparison. The experts have accepted, as has this Court, Dr. Baker's representation that he intends to make the military his career, and does not intend, at some point after this matrimonial action is completed, to enter private practice. I would note, however, that Dr. Baker's own expert testified that rather than the relatively small figures we are discussing for the enhanced pay, if Dr. Baker was to enter private practice, the amount being discussed would be into the seven figures (in excess of a million dollars) rather than the figures being utilized by

accepting Dr. Baker's representations as to his career plans. Dr. Baker himself concedes that while he does not know New York State Pay rates, that an anesthesiologist in private practice in California would earn approximately $150,000 to $180,000 per year as compared to the salary paid to a military physician. In short, reliance upon Dr. Baker's representations as to his career intentions results in a considerable shortfall to Mrs. Baker, it, in fact, he should ever enter private practice.

Mr. Fahey, the expert for Dr. Baker has agreed with Dr. Miner's work life expectancy for the defendant. The work life expectancy figures varied depending upon the date at which the computation was made, but essentially, the work life expectancy of Dr. Baker as of the time of testimony at trial was 27.7 years. Dr. Miner then assumed that promotions would accrue to Dr. Baker on a regular basis in accordance with a typical military career path. However, he did not augment those earnings by certain retention bonuses for a period of five years, in order,

according to Dr. Miner, to present a "conservative projection". Dr. Miner also included variable special pay and additional special pay.

A significant discrepancy between the computation of Mr. Fahey and the testimony of Dr. Miner resulted from Mr. Fahey not including in the pay calcualtions any additional pay for board certification, or for promotion beyond the rank of major. The Court finds Dr. Miner's assumptions on these issues more acceptable that Mr. Fahey's. First, it is conceded by both Mr. Fahey and Dr. Baker that Dr. Baker would make considerably more in private practice than in the military. Assuming that Dr. Baker does not recieve the usual promotions during the course of his military service, it would be reasonable to assume that at some point either the military would discharge Dr. Baker, or that he would voluntarily leave military service. In either case his pay would be considerably higher that that utilized in the prepare charts. Likewise, history indicates that Dr. Baker has been highly

motivated in his career. He attended not only college but graduate school and medical school and completed his residency. There is no reason to presume that at this point Dr. BaKer will perform in anything less than the committed level he has shown in the past. Therefore, to assume no further promotions for this man's entire military career, beyond the ranK of major, is unrealistic.

The Court also note that while there could be disagreement as to the use of board certification pay within these computations of enhanced earnings, nevertheless, the Court thinKs the inclusion is appropriate. Dr. BaKer had completed all of his advance schooling for the medical degree during the course of this marriage, and he had completed both his internship and the vast majority of his his residency prior to the commencement of the matrimonial action. In short, he was well on his way to being board eligible prior to the breaK-up of the marriage. Under these circumstances, to suggest that his board certification is entirely

the result of effort put forth after the commencement of the matrimonial action is unrealistic and will not be adopted by the Court.

The last item that merits discussion is the use of a discount rate. Both experts are in agreement that a discount rate should be applied, and defendant's expert indicates that a discount rate could reasonably be found to be anything in the two to four percent range, though he favors the use of the figure of three percent. Mr. Fahey conceded that he could not find fault with Dr. Miner's use of the two percent figure, however, and it is that figure which is adopted by the Court.

Both experts agree that Dr. Baker should be credited for the tax effect on his enhanced earnings. In short, enhanced earnings should be reduced by the taxes that Dr. Baker will be expected to pay over the course of his career. Dr. Miner calculated taxes at two possible rates, a 29 percent marginal rate and a marginal tax rate of 39.9 percent. In utilizing the 29 percent rate he presumed a federal marginal tax

rate of 24 percent and a state marginal tax rate of 5 percent. In utilizing this figure of 39.9 percent, Dr. Miner considered a federal marginal tax rate of 34 percent and a state marginal tax rate of 5.9 percent. Dr. Baker's expert, Mr. Fahey, felt that the appropriate tax rate was a percent marginal tax rate, assuming a 28 to 33 percent swing on the federal marginal tax rate and a five percent state marginal tax rate. The Court feels that the highest marginal tax rate is the appropriate figure and, therefore, adopts the highest possible tax rate of 39.9 percent.

In sum, the Court has relied upon the worklife expectancy which has been agreed upon by both experts, a discount rate of two percent, which is acceptable by both experts, and the most conservative tax rate of 39.9 percent. The Court's use of the basic pay scale for a military physcian is not disputed. The Court is considering that Dr. Baker will eventually become board certified and that Dr. Baker will recieve promotions over the course of his military career. Utilizing all of these assumptions and

the figures as provided by the experts, this results in enhanced earnings as a result of Dr. Baker's education over and above the bachelor's degree he held at the time of his marriage, of $426,276.00.

The Court Does not find credible proof offered on behalf of Dr. Baker that he should be credited for $74,000 for loans allegedly due and owing his parents as a result of monies advanced by them for his medical education. Dr. Baker offered no documentary evidence whatsoever to support the existence of these loans, and acknowledges that no promissory notes or loan documents of any kind were ever signed, nor were the debts memorialized in any writing. Accordingly, the Court will not reduce the enhanced earnings figure for any claims of debts owed to Dr. Baker's parents.

The equitable share to which the plaintiff is entitled has been evaluated in accordance with the relevant statutory factors of Domestic Relations Law §236(B)(5)(d). The plaintiff, Donna L. Baker's contributions during the

marriage to the defendant's enhanced earning capacity were primarily those of a supportive spouse, mother and homemaker, and were considerable. Throughout the period of Dr. Baker's education, the parties frequently located in support of Dr. Baker's pursuit of his medical license. As Dr. Baker himself has indicated, he kept long hours, was unavailable to the family and the plaintiff essentially was forced to raise the children herself. Additionally, as the record reflects, all of this was done at considerable financial sacrifice and in lieu of the plaintiff pursuing her own graduate schooling and career interests. The parties met while both were students at Arizona State University. Donna Baker recieved an opportunity to enter into an Internship at Yale University following college to pursue her career in Dietetics. However, she ultimately forfeited her internship and returned to Nashville to remain with Dr. Baker and be supportive of his graduate schooling in Tennessee. Donna Baker was employed essentially all of the time that she was with Dr. Baker until

the birth of their first child. She continued to work as time allowed in between and following the births of the parties' three children. Her entire income during their marriage was used for marital expences. It is this Court's determination that plaintiff is entitled to 33-1/3 percent of defendant's enhanced earning capacity, which results in an award to the plaintiff of $142,092.

Submit agreed-upon order accordingly.

STATE OF NEW YORK SUPREME COURT
COUNTY OF ONONDAGA

FINDINGS OF FACT AND CONCLUSIONS OF LAW

RJI NO. 33-89-3439
INDEX NO. M-1348-89

PRESENT, HON. LEO F. HAYES

DONNA L. BAKER, PLAINTIFF,
V
DUANE C. BAKER, M.D., DEFENDANT.

(Dated: December 23, 1992)

The above-entitled action having been duly brought on by the Plaintiff against the Defendant for a Judgement of Divorce, and a true copy of

the summons with notice and verified complaint having been personally served upon the Defendant within the State of New York, and the Defendant having served an Answer with Counterclaim controverting the material allegations of the complaint, and the issues of fact raised by the pleadings having duly come on to be tried before this Court at a Trial Term before the HONORABLE LEO F. HAYES, on the 4th, 7th, and 12th days of November, 1991, and the plaintiff having appeared in person and by her attorneys, FINOCCHIO AND ENGLISH, VINCENT J. FINOCCHIO, JR., ESQ., OF COUNSEL, and the Defendant having appeared in person by his attorneys, ALDERMAN AND ALDERMAN, RICHARD B. ALDERMAN, ESQ., Of Counsel, and further, at the parties request the Court refrained from making a determination subject to ongoing settlement negotiations between the parties up to and including the 5th day of October, 1992, and

The Court having heard the proof of the parties herein in support of the allegations contained in their respective pleadings, and the

Defendant having withdrawn his Answer and Couterclaim relative to and consenting to the Plaintiff being granted a divorce based upon the grounds of cruel and inhuman treatment, and due deliberation having been had, the Court does now find and decide as follows:

FINDINGS OF FACT

1. The Plaintiff and the Defendant were married on the 6th day of January, 1978, in Johnson City, Tennessee.

2. That there are three children born of said marriage: AMY BAKER, born December 1, 1982; KALEN BAKER, born November 15, 1984; and KRISTIN BAKER, born May 20, 1988.

3. At the time of the commencement of this action, both parties were residents of the State of New York, and had resided therein for two years prior to said commencement date.

4. That the Defendant has engaged in a continuous course of conduct toward the Plaintiff which constitutes cruel and inhuman treatment so as to render it unsafe and improper to require the parties to cohabit as husband and wife. Such

cruel and inhuman treatment consisted of the following:

(a) That throughout the term of the marriage, and more particularly since August, 1988, the Defendant refuses to provide fair and adequate support for the Plaintiff and the parties' three (3) infant children. That the Defendant, through most of this period has continually dictated to the Plaintiff the manner that she should make expenditures for household expences, and for along period of time provided her with a twice per month allowance that was totally inadequate for the support of the Plaintiff and the infant children, and any request by the Plaintiff for additional funds for such household needs were met with an angry response by the Defendant, causing the Plaintiff extreme mental anguish and anxiety;

(b) That since on or about August, 1989, the Defendant has repeatedly threatened the Plaintiff by stating he "would prove her an unfit mother" and take the parties' three (3) infant children away from her, causing Plaintiff extreme mental

anguish and anxiety;

(c) That during the year 1986, after having gone through a great deal of marital discord, the parties attended marital counseling at the urging of the Plaintiff, however, after two (2) sessions, the Defendant stated that he did not have any problems and refused to continue said counseling, causing Plaintiff extreme mental anguish and anxiety;

(d) That on or about August, 1986, the Defendant demanded that the Plaintiff and the parties' two (2) infant children move out of the marital residence. That the Defendant telephoned Plaintiff's parents and stated to them that they would have to be financially responsible for the Plaintiff and their two (2) infant children, causing Plaintiff extreme embarrassment, mental anxiety and cruelty;

(e) That since on or about June, 1989,the Plaintif began babysitting other children in order to supplement her allowance from the Defendant, however, the Defendant then demanded that the Plaintiff use the additional funds for

additional household expences that he expected her to pay, causing Plaitiff extreme undue financial hardship, mental anquish and anxiety;

(f) That throughout the term of the marriage,the Defendant has refused to allow the Plaintiff and the parties' infant children to visit with Plaitiff's parents without his permission. That on or about August, 1989, when the Plaintiff's parents came to visit without the Defendant's Knowledge, the Defendant became angry and refused to communicate with the Plaintiff, causing the Plaintiff extreme mental anguish and anxiety;

(g) That from approximately July, 1988, to Jaunuary, 1989, the parties attempted a separation in order to lessen some of the marital stress, and during that time period, the Defendant failed and refused to provide any support to the Plaintiff and the parties' three (3) infant children, causing the Plaintiff extreme financial hardship, whereby she was compelled to seeK public assistance, in spite of the fact that at that time the Defendant was

earning an average of $28,000 per year. That the Defendant, as a condition of his agreeing to a reconcilliation, forced the Plaintiff to agree to pay all expences that she had incurred regarding her relocation to New Jersey, and any expences relative to her supporting herself and the infant children, and that she pay all expences regarding her move backK to Syracuse, causing the Plaintiff extreme mental anguish and anxiety;

(h) That the Defendant has refused to allow Plaintiff to be a joint holder of any banKing accounts with the Defendant. That the Defendant is extremely dictatorial with regards to the parties' finances and refuses to inform the Plaintiff about any issues regarding the parties financial situation. That the Defendant has all of his financial assets in trust with his parents and not the Palintiff nor their children. That this has caused Plaitiff extreme mental anguish and anxiety as in the unfortunate event that the Defendant should become deceased, his financial assets would turn directly over to his parents, leaving the Plaintiff and the parties' three (3)

infant children financially burdened;

(i) That on or about August, 1988, the Defendant had the parties' telephone disconnected stating to Plaintiff that he "wasn't going to pay for her calls", causing Plaintiff extreme mental anguish and anxiety;

(j) That further on or about August, 1988, the Defendant telephoned Plaintiff and stated that he had instructed the utility company to disconnect the electricity at the marital residence and further indicated to Plaintiff that she should have to call and have it reconnected with the bill in her sole name, causing Plaintiff extreme mental anguish, anxiety and embarrassment;

(K) That further on or about August, 1988, the Defendant tooK all of the parties' credit cards and wrote letters to the financial institutions advising them that Plaintiff was no longer allowed to use said credit cards and that Defendant was no longer financially responsible for the Plaintiff, causing Plaintiff extreme mental anguish, anxiety and embarrassment;

(l) That on or about August, 1988, the Defendant took out a public notice in the newspapers stating that he was not financially liable for the Plaintiff, causing Plaintiff extreme mental anguish, anxiety and embarrassment;

(m) That throughout the term of the marriage and continuing to the present time, the Defendant has refused to do any social activities with the Plaintiff and the infant children of the marriage and has refused to discuss any financial problems or any other marital problems regarding the upbringing of the infant children of this marriage with the Plaintiff, causing the Plaintiff extreme embarrassment, mental anguish and anxiety;

(n) That throughout the term of the marriage and continuing to the present day, the Defendant has repeatedly stated to the Plaintiff that the parties' marital debts are all the fault of the Plaintiff and the Plaintiff's mismanagement of the parties' finances, causing Plaintiff extreme mental anguish and anxiety;

5. That as a result of the aforesaid conduct on the part of the Defendant, the Plaintiff has been caused to suffer great mental anguish and pain, which has had a detrimental effect upon her health.

6. That the Plaintiff had done nothing to provoke the aforesaid conduct of the Defendant and has neither forgiven nor condoned such conduct.

7. That five years have not elapsed since the grounds arose upon which this action is based.

8. That there is no decree of divorce between the parties hereto and there isno other judgment or decree between the parties hereto in any other jurisdiction, and ther is no other matrimonial action pending between the parties.

9. That since June of 1990, the Defendant has been gainfully employed as an Anesthesiologist with the rank of Captain, by the United States Air Force. The Plaintiff is gainfully employed as a Registered Dietician by the Onondaga County Health Department.

10. With regard to maintenance and child support, the Court makes the following specific findings in accordance with the provisions of Section 236(B) of the Domestic Relations Law:

A. The Defendant is employed as a Physician by the United States Air Force and his earnings per year as of the time of the trial were approximately $66,000.00. The Court did not find credible Defendant's claimed unreimbursed professional employment expences and finds the sum of $1,000.00 to be the maximum the Court will allow for such expense, Defendant having offered no documentation to support the claims.

B. The Plaintiff is employed as a Registered Dietician and earned $23,037.56 per year as of the date of the trial herein.

11. With regard to equitable distribution, the Court makes the findings of fact and conclusions of law as set forth in its written decision of December 11, 1992, which is attached hereto and made apart hereof. In addition, regarding the personal property owned jointly by the parties as marital property, the Court will

order that the property will be divided 50/50 between the Plaintiff and the Defendant. The Court is unable to make a specific finding as to bank accounts, savings bonds and other personality, as the record is insufficient to particulary identify each of those marital assets. Regarding the marital residence, the Plaintiff is granted exclusive use of the marital residence, and the Defendant is to maitain as maintenance for the Plaintiff, the mortgage, the taxes, the insurance and the basic utility expences associated therewith. If the parties are unable to identify and divide ther personality, the Court will render whatever assistance is neede.

12. The infant children of the marriage have resided with the Plaintiff continuously since their births, and it would be in the best interest of the children if they were to reside with their mother with reasonable visitation to the Defendant.

CONCLUSIONS OF LAW

1. That jurisdiction has been obtained

pursuant to Section 230 of the Domestic Relations Law of the State of New York.

2. The Plaintiff is entitled to a Judgement of Divorce against the Defendant herein pursuant to the provisions of Section 170(1) of the Domestic Relations Law on the grounds that the cruel and inhuman treatment of the Plaintiff by the Defendant has so endangered the mental and/or physical well-being of the Plaintiff as to render it unsafe and/or improper for the Plaintiff to cohabit with the Defendant.

3. That the Plaintiff shall have custody of the minor children of the marriage: AMY ERIN BAKER, KALEN ANDREW BAKER and KRISTEN ELIZABETH BAKER, with liberal and reasonable visitation awarded to the Defendant.

4. That the Defendant shall pay to the Plaintiff child support for the three unemancipated children of the parties pursuant to the Child Support Standards Act. Support shall continue as previously set by the Court. The parties are directed to recompute child support annually per the guidelines and to promptly

exchange W-2 forms and other data so that new payments can commence on or before February 15 of each year.

5. That the Defendant shall be entitled to claim the three unemancipated children of the parties as exemptions on his Federal and State income tax returns commencing 1991 and thereafter provided he promptly and regularly pays the required child support to the Plaintiff for the said children.

6. That all personal property owned jointly by the parties is to be divided equally between the Plaintiff and the Defendant.

7. That the Court continues all present orders, including those relative to maintenance as and for the Plaintiff, by continuing the order requiring the Defendant to pay the mortgage, taxes and insurance and basic utility expenses associated therewith.

8. That all further questions of child support and of enforcement, modification or interpretation of the Judgement of Divorce herein shall be referred to the Family Court of Onondaga

County or any other appropriate jurisdiction.

9. That within ten (10) days after entry with the County Clerk, a copy of the Judgement of Divorce herein shall be filed with the Family Court Clerk in and for the County of Onondaga, pursuant to Section 251 of the Domestic Relations Law.

10. That either party may resume the use of any former of pre-marriage surname, if he or she so chooses.

LET JUDGEMENT BE ENTERED ACCORDINGLY.

STATE OF NEW YORK SUPREME COURT
COUNTY OF ONONDAGA

JUDGEMENT OF DIVORCE
RJI NO. 33-89-3439
INDEX NO. M-1348-89

PRESENT, HON. LEO F. HAYES

DONNA L. BAKER, PLAINTIFF,
V
DUANE C. BAKER, M.D., DEFENDANT.

(Dated: December 23, 1992)

The above-entitled action having been duly brought on by the Plaintiff aagainst the

Defendant for a Judgement of Divorce, and a true copy of the summons with notice and verified complaint having been personally served upon the Defendant within the State of New York, and the Defendant having served an Answer with Counterclaim controverting the material allegations of the complaint, and the issues of fact raised by the pleadings having duly come on to be tried before this Court at a Trial Term before the HONORABLE LEO F. HAYES, on the 4th, 7th, and 12th days of November, 1991, and the plaintiff having appeared in person and by her attorneys, FINOCCHIO AND ENGLISH, VINCENT J. FINOCCHIO, JR., ESQ., OF COUNSEL, and the Defendant having appeared in person by his attorneys, ALDERMAN AND ALDERMAN, RICHARD B. ALDERMAN, ESQ., Of Counsel, and further, at the parties request the Court refrained from making a determination subject to ongoing settlement negotiations between the parties up to and including the 5th day of October, 1992, and

The Court having heard the proof of the parties herein in support of the allegations

contained in their respective complaint and countercalim, and due deliberation having been had, the Court does now find and cite as follows:

ORDERED, ADJUDGED AND DECREED, that, pursuant to the provisions of Section 170(1) of the Domestic Relations Law of the State of New YorK, the marriage between the Plaintiff and the Defendant be, and the same hereby is desolved on grounds that the Defendant has engaged in a course of conduct towards the Plaintiff wich constitutes cruel and inhuman treatment, and it is further,

ORDERED, ADJUDGED AND DECREED, the Plaintiff shall have custody of the minor children of the marriage, with liberal and reasonable visitation awarded to the Defendant, and it is further,

ORDERED, ADJUDGED AND DECREED, that the Defendant shall continue to pay child support pursuant to the prior pending orders of the Court, subject to the provisions of the Child Support Standards Act. The parties are directed to recompute child support annually per the guidlines and to proptly exchange W-2 forms and

other data so that new payments can commence on or before February 15 of each year; and it is further,

ORDERED, ADJUDGED AND DECREED, that the Defendant shall be entitled to claim the three unemancipated children of the parties as exemptions on his Federal and State income tax returns commencing 1991 and thereafter, providing he promptly and regularly paysthe required child support to the Plaintiff for the said children, and it is further,

ORDERED, ADJUDGED AND DECREED, that the Plaintiff shall be entitled to the sum of $142,092.00 as and for the enhanced value of defendant's medical license; and it is further,

ORDERED, ADJUDGED AND DECREED, that the Court shall continue all present orders, including those relative to maintenance of the Plaintiff in that the Plaintiff shall have exclusive use and possession of the marital residence until the emancipation of the children and/or until the youngest child, then surviving, reaches the age of 21, and/or the remarriage or

death of the Plaintiff herein, and direct that as and for maintenance of the Plaintiff that the Defendant is to make all payments of mortgage,taxes and insurance, and all basic utility expences to maintain the marital residence, and it is further,

ORDERED, ADJUDGED AND DECREED, that the Plaintiff is entitled to payment of reasonable attorney's fees and expences relative to the prosecution of this case, and it is further,

ORDERED, ADJUDGED AND DECREED, that the parties are to divide the personal property owned jointly by the parties 50/50 between the Plaintiff and the Defendant. The Court is unable to make a specific finding as to bank accounts savings bonds and other personality, as the record is insufficient to particularly identify each of those marital assets, and it is further,

ORDERED, ADJUDGED AND DECREED, that all future questions of child support and of enforcement, modification or interpretaion of the judgement of divorce herein shall be referred to the Family Court of Onondaga County of any other

appropriate jurisdiction; and it is further,

ORDERED, ADJUDGED AND DECREED, that within 10 days after the entry with the County ClerK, a copy of the judgement of divorce herein shall be filed with th Family Court ClerK in and for County of Onondaga, pursuant to Section 251 of the Donestic Relations Law; and it is further,

ORDERED, ADJUDGED AND DECREED, that either party may resume the use of any former or pre-marriage surname if he or she so chooses.